165-107

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 413.

R. M. GARDNER, M. T. HOLLEY, SR., AND E. C. BEACH, PLAINTIFFS IN ERROR,

vs.

JAMES DONALD.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

FILED JANUARY 17, 1896.

(16,150.)

(16,150.)

SUPREME COURT OF THE UNITED STATES.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 12, 1896.

1 *Caption.*

THE UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit. At Law.

At a circuit court of the United States for the fourth circuit, in and for the district aforesaid, on the first Monday in August, 1895, before the Honorable Charles H. Simonton, circuit judge of the United States for the fourth judicial circuit, holding said circuit court according to the form of the act of Congress in such cases made and provided, the following proceedings were had:

JAMES DONALD, Plaintiff,
versus
R. M. GARDNER, M. T. HOLLEY, SR., and E. C. BEACH, Defendants.

Be it remembered that heretofore, to wit, on the 16th day of February, A. D. 1895, the said James Donald, by his attorneys, Messrs. Bryan & Bryan, came into court and filed the following complaint; which complaint is in the words and tenor following:

2 *Complaint.*

THE UNITED STATES OF AMERICA,
District of South Carolina.

Circuit Court, Fourth Circuit.

JAMES DONALD, Plaintiff,
vs.
R. M. GARDNER, M. T. HOLLY, JR., and E. C. BEATH, Defendants.

The plaintiff above named, complaining of the defendants above named, alleges:

I. That the plaintiff was at the times hereinafter mentioned and now is a citizen of the State of South Carolina and a citizen of the United States, residing at Charleston, in the State of South Carolina.

II. That on the — day of January, 1895, the plaintiff, being the owner of certain intoxicating malt liquors, to wit, one barrel of Rochester beer, containing ten dozen pint bottles, in the city of New York, of the value of ten dollars, shipped the same from the city of New York to the city of Charleston, South Carolina, by way of the Old Dominion steamship line and the Atlantic Coast line to the city of Charleston, South Carolina, the residence of the plaintiff, the said package being marked "James Donald, Charleston, S. C., one barrel of bottle beer," which said package was duly received by the said Old Dominion steamship line, in the city of New York, in the State of New York, and in pursuance of such contract of shipment transported to Charleston, South Carolina, the last con-

necting carrier being the North Eastern Railroad Co., and while the said package was in the possession of the North Eastern Railroad Co., at Charleston, S. C., as common carrier, to wit, on the 26th day of January, 1895, the said defendants unlawfully, wrongfully, and forcibly seized the said package and took and carried away the same.

III. That the said malt liquor as aforesaid contained in the said package was not produced within the State of South Caro-
3 lina, but made in the State of New York, and was imported into the State of South Carolina by the plaintiff for his own use and consumption and was not intended for sale, barter, trade, or exchange by the plaintiff within the State of South Carolina.

IV. The plaintiff further alleges that the seizing and carrying away forcibly of the said package of malt liquor, as aforesaid, by the defendants was done without warrant or authority of law, but, on the contrary, under pretense of legal authority, well known by the said defendants to be utterly pretensive, null, and void, to wit, under the pretense of authority of an act of the General Assembly of the State of South Carolina commonly called "the dispensary law," entitled "An act to further declare the law in reference to and further regulate the use, sale, consumption, transportation, and disposition of alcoholic liquors or liquids within the State of South Carolina, and to police the same," approved January 2, 1895, to which reference is fully prayed; which said act, in its general scope, tenor, purpose, and result and in so far as it attempts to abridge or destroy the right of this plaintiff (and of all others in like condition in the State of South Carolina) to import into the State of South Carolina such liquors as aforesaid of the plaintiff for his own use and to use and consume in the State of South Carolina the same so imported, is not an act enacted in the lawful exercise of the police power of the State of South Carolina, and is a restriction and regulation of commerce between the States and foreign nations and discriminates in favor of the products of the State of South Carolina and against the products of other States and countries, and is in conflict with article one, section- eight and nine, of the Constitution of the United States and the laws of Congress made thereunder, and is unconstitutional, null, & void.

V. That by and under article 1, sections eight and nine, of the Constitution of the United States and the laws of Congress in
4 pursuance thereof, regulating commerce between the States and foreign nations, the plaintiff, as citizen of the United States, residing at Charleston, in the State of South Carolina, had at the times hereinbefore mentioned and now has the right of importing his said property, the said package of malt liquor as aforesaid, for his own use and consumption and to use and consume the same, so imported from the city of New York, in the State of New York, to the city of Charleston, in the State of South Carolina (as well as if imported from any or all other cities and places in other States and foreign countries to the city of Charleston), the residence of the plaintiff, without interference or hindrance by any persons whomsoever claiming to act under the pretense of authority of the said null

and void act aforesaid of the General Assembly of the State of South Carolina.

VI. That previous to such seizure by defendants, as aforesaid, of such malt liquors contained in such package, to wit, on the — day of January, 1895, the plaintiff gave due notice to the defendants of his intention, in the exercise of his legal rights guaranteed by the Constitution of the United States, to import into the State of South Carolina from other States and foreign countries, as he may need the same, ales, wines, and other liquors for his own use, and notified the said defendants and all concerned that any seizure of the said goods under any pretense of authority would be a great and grievous trespass and in disregard of his known constitutional rights, for which they and all concerned would be held responsible by all legal remedies for his protection.

VII. That notwithstanding such notice and notwithstanding the known rights of this plaintiff secured to him by the Constitution and laws of the United States, the said defendants, claiming to act as constables of the State of South Carolina, forcibly seized and carried away said package of malt liquor as aforesaid; and the same unlawful acts they did knowingly, wrongfully, wilfully, and maliciously and with intent to oppress and humiliate and intimidate this plaintiff and make him afraid to rely upon the Constitution and laws of the United States and the judicial power thereof for his protection in those rights, privileges, and immunities secured to the plaintiff by the Constitution and laws of the United States.

VIII. The plaintiff further alleges that the said defendants by the said malicious trespass as aforesaid intended to make an example of the plaintiff, and thereby deter him and others from exercising his and their rights and privileges secured by the Constitution and laws of the United States, and to deter him and others from relying upon the Constitution of the United States and the judicial power thereof for the protection of those rights guaranteed by the Constitution, and that in contempt of and in defiance of the said Constitution and laws of the United States and of the judicial power thereunder the defendants seized as aforesaid the said package of malt liquors, by reason whereof plaintiff's said rights were grossly violated and abused and his standing was greatly injured and his feelings greatly wounded and mortified.

IX. That the defendants well knew when they made said seizure and committed said trespass as aforesaid that the said seizure was unlawful and forbidden by the Constitution and laws of the United States, but the defendants did so trusting and believing that they would be shielded and protected from all harm by their official superiors in the State of South Carolina, and that they made such seizure and committed such trespass maliciously with the purpose and intent to trample on the plaintiff's rights under the law and to do him all the injury in their power.

X. That the value of said package of malt liquors as aforesaid is the sum of ten dollars, and by reason of all of which wrongs and

injuries aforesaid the plaintiff has been injured and damaged six thousand dollars.

Wherefore the plaintiff demands judgment against *this* defendant- for the sum of six thousand dollars and costs.

BRYAN & BRYAN,
Plaintiff's Attorneys.

Filed 16th Feb'y, 1895.

6 *Summons.*

UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit.

In the Circuit Court.

JAMES DONALD, Plaintiff,
vs.
R. M. GARDNER, T. M. HOLLY, JR., and E. C. BEATH, Defendant-.

Summons for Relief. Complainant Served.

To R. M. Gardner, M. T. Holly, Jr., & E. C. Beath, defendants in this action:

You are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer on the subscriber- at their office, No. 11 Broad street, Charleston, S. C., on or before the rule day, occurring twenty days next after the service of this summons on you, exclusive of the day of service.

If you fail to answer this complaint within the time aforesaid, the plaintiff will apply to the court for the relief demanded in the complaint.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, at Charleston, South Carolina, the 16th day of February, anno Domini one thousand eight hundred and ninety-five, and in the 119 year of the sovereignty and Independence of the United States of America.

BRYAN & BRYAN,
Plaintiff's Attorneys.

J. E. HAGOOD,
C. C. C. U. S.; Dist. S. C.

7 William Reed, deputy U. S. marshal, being duly sworn, says that he served the summons and complaint in this action on the defendant- by delivering to them and each of them personally and leaving with each of them copies of the same, at Charleston, S. C., on the 16th day of February, A. D. 1895, and that he knows the persons so served to be the ones mentioned and described in the summons as R. M. Gardner, F. M. Holly, Sr., and E. C. Beath, the defendants therein, and the deponent is not a party to the action.

WILLIAM REED,
Deputy U. S. Marshall.

Sworn to before me this 18th day of February, 1895.

[SEAL.] C. J. MURPHY,
Deputy C. C. C. U. S., Dist. S. C.

Filed 16th February, 1895.

8 *Demurrer.*

THE UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit.

Circuit Court.

JAMES DONALD, Plaintiff,
vs.
R. M. GARDNER, M. T. HOLLEY, SR., and E. C. BEACH, Defendants.

The defendants above named demur to the complaint herein upon the following grounds, to wit:

1. That, as it appears upon the face of the complaint, this court has no jurisdiction of the matters and things forming the subject of this action.

2. That, as it appears upon the face thereof, the complaint does not state facts sufficient to constitute a cause of action cognizable in this court.

WILLIAM A. BARBER,
Attorney General, for Defendants.

I do hereby certify that, in my opinion, this demurrer is well founded in point of law.

WM. A. BARBER.

STATE OF SOUTH CAROLINA,
County of Charleston.

9 Personally comes before me R. M. Gardner, M. T. Holley, Sr., and E. C. Beach, who upon oath say that they are the defendants, and that this demurrer is not interposed for delay.

R. M. GARDNER.
M. T. HOLLEY, SR.
E. C. BEACH.

Sworn to before me this 5th day of March, 1895.

W. GIBBES WHALEY,
Not. Pub., S. C.

Filed 5th March, 1895.

Service of demurrer accepted this 5th day of March, 1895, at Charleston, S. C.

BRYAN & BRYAN,
Pl'ff's Att'ys.

10 *Order Overruling Demurrer.*

UNITED STATES OF AMERICA,
District of South Carolina.

Circuit Court, Fourth Circuit. At Law.

JAMES DONALD, Plaintiff,
against
J. M. SCOTT, M. T. HOLLEY, SR., and R. M. GARDNER, Defendants. } Complaint for Damages.

This cause came to be heard on demurrer to the complaint on the 6th day of May, 1895; and upon hearing Hon. W. A. Barber, attorney general, and C. P. Townsend, ass't attorney general, of South Carolina, in support of the demurrer and Mr. J. P. K. Bryan against the same, it is now—

Ordered and adjudged that the demurrer be overruled and the defendant- have leave to answer the complaint herein, provided the answer is served on plaintiff's attorney on or before May 20, 1895, and that the cause be placed forthwith upon the law docket of this court for trial by jury.

CHARLES H. SIMONTON,
Circuit Judge.

8th May, 1895.

Filed 9th May, 1895.

11 *Answer of Defendants.*

UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court. In Equity.

JAMES DONALD, Plaintiff,
vs.
R. M. GARDNER, M. T. HOLLY, SR., & E. C. BEACH, Defendants. } Complaint for Damages.

The defendants, R. M. Gardner, M. T. Holly, Sr., and E. C. Beach, by William A. Barber, attorney general, answering the complainants herein, say:

I. They deny each and every allegation of the complaint except such as are hereinafter specifically admitted.

II. That as to the allegations contained on the 1st paragraph of the complaint they have no knowledge or information sufficient to form a belief.

III. They admit seizing a barrel of beer in the depot of the North Eastern Railroad Company about the time stated in the 2nd paragraph, but deny that they unlawfully and forcibly seized the

same and carried it away, and aver that they seized the beer as State constables, and that they had authority to do so under the law commonly known as the dispensary law of South Carolina.

IV. That as to the allegations of the 3rd paragraph of the complaint they have no knowledge or information sufficient to form a belief, and deny the same.

V. They deny the allegations of the 4th paragraph of the complaint as conclusions of law, and aver the contrary to be so, and also deny that they forcibly seized and carried away the package of beer without warrant or authority of law, and submit that the dispensary law is not in its general scope, tenor, effect, purpose, and result a regulation and restriction of commerce and in conflict with the Constitution of the United States or the laws of Congress made thereunder and is null and void.

12 VI. That as to the allegations of the 5th paragraph of the complaint they deny that the plaintiff has the right to import liquors into the State for his own use and consumption, but aver that the law of South Carolina known as the dispensary law prohibits the same.

VII. That they admit some kind of notice was given them by some one, as alleged in the 6th paragraph, but they do not know whether it was the plaintiff or not, and do not now remember the precise character of the said notice.

VIII. They deny the allegations contained in the 7th paragraph of the complaint, with the exception that they did not seize a package of beer, but aver it was done by them as State constables, under the authority of the act known as the dispensary law.

IX. They deny the allegations of the 8th paragraph of the complaint.

X. They deny the allegations of the 9th paragraph of the complaint.

XI. They deny that the plaintiff has been injured and damaged six thousand dollars.

Wherefore the *plaintiffs* pray that the complaint be dismissed.

WM. A. BARBER,
Attorney General.

13 UNITED STATES OF AMERICA, }
District of South Carolina. }

Personally appeared before me M. T. Holly, Sr., R. M. Gardner, and E. C. Beach, who, after being severally sworn, say that the foregoing answer is true of their own knowledge.

M. T. HOLLY, SR.
R. M. GARDNER.
E. C. BEACH.

Sworn to before me this 20th day of May, A. D. 1895.

GEO. F. VON KOLNITZ, JR.,
Notary Public, S. C.

Filed 20th May, 1895.

14 *Stipulation Waiving Jury Trial.*

UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit. At Law.

JAMES DONALD, Plaintiff,
vs.
R. M. GARDNER, M. T. HOLLEY, SR., E. C. BEACH, Defendants.

It is hereby stipulated and agreed by and between the attorneys of record herein that the issues of fact in the above case be tried and determined by the court without the intervention of a jury.

August 1, 1895.

WM. A. BARBER,
Attorney Gen'l of S. C.
BRYAN & BRYAN,
Pl'ff's Att'ys.

Filed 10th August, 1895.

15 *Finding and Judgment of Court.*

UNITED STATES OF AMERICA,
District of South Carolina.

Circuit Court, Fourth Circuit. At Law.

JAMES DONALD, Plaintiff,
vs.
J. M. SCOTT, M. T. HOLLEY, SR., and E. C. BEACH, Defendants.

Complaint Filed 16 Feb., 1895.

This cause having been, by stipulation between the parties dated 1st of August, 1895, and filed 10th of August, 1895, submitted to the court to try and determine the issues of fact herein without the intervention of a jury, and the said cause having been heard by the court, now, upon consideration thereof—

The court finds for the plaintiff the sum of three hundred dollars; and it is now, on motion of Bryan & Bryan, plaintiff's attorneys—

Ordered and adjudged that the plaintiff have judgment against the defendants for the sum of three hundred dollars and costs of this action.

CHARLES H. SIMONTON,
Circuit Judge.

10th August, 1895.

Filed 10th August, 1895.

16 *Bill of Exceptions.*

UNITED STATES OF AMERICA,
District of South Carolina.

Circuit Court, Fourth Circuit. At Law.

JAMES DONALD, Plaintiff, Defendant in Error,
vs.
R. M. GARDNER, M. T. HOLLEY, SR., & E. C. BEACH, Defendants.

Be it remembered that on the 10th day of August, at the regular term of the said court, begun and holden in the city of Greenville, in and for the district of South Carolina, before Hon. Charles H. Simonton, the issues in the above-stated cause came on to be tried before said judge, presiding in said court, without a jury, plaintiff being represented by Messrs. Bryan & Bryan, his attorneys, and defendants by the Hon. Wm. A. Barber, attorney general of the State of South Carolina, defendants' attorneys.

The evidence of the plaintiff, which is embodied in the following statement, shows the following facts:

James Donald.

(1.) I am a citizen of the United States and of the State of South Carolina; have been many years and am now resident of Charleston, S. C. I am 56 years old, and have been and am now a baker. I have been accustomed to use alcoholic liquors, beer, wine, and ardent spirits in moderation all my life. I have been accustomed to use different brands of liquors at different times.

(2.) On — day of January, 1895, I had shipped from New York city to my address, "James Donald, Charleston, S. C.," one barrel of bottled beer (10 dozen bottles), made in New York State, known as "Rochester beer." This package came from New York by way of the Old Dominion steamship line and Atlantic Coast line to the city of Charleston, and while in the North Eastern R. R. depot, at Charleston, S. C., was, on 20th January, 1895, seized by the defendant, claiming to act as State constable, under the authority of the "dispensary law of South Carolina," to wit, act approved Jan. 2, 1895, and carried away.

17 (3.) The said package of beer was produced in State of New York and was imported into the State of South Carolina for the use of myself (James Donald), and was not intended for sale, barter, trade, or exchange by plaintiff within the State of South Carolina.

(4.) I was legally advised that the dispensary law of the State of South Carolina authorizing seizure of intoxicating liquors imported for my own use was void, and all such seizure was illegal as being against the Constitution of the United States, and that I had the legal right to buy in other States and foreign countries the wine,

beer, ales, and ardent spirits the product of other States & foreign countries, and to import them into South Carolina for my own use, and to own, possess, use, and consume the same so imported in South Carolina.

That before the importation of said package and before the seizure I sent a written notice by mail to the defendant- informing them of my intention, in exercise of my legal right guaranteed by the Constitution of the United States, to import ales, wines, and other liquors from other States and foreign countries and for my own use and consumption as I may need the same, and that any seizure of said goods under any pretence of authority would be a great and grievous trespass and in disregard of my known constitutional rights, for which they and all concerned would be held responsible by all legal remedies for my protection.

That, notwithstanding this written notice, these defendants took and carried away the said package, as above stated, and have repeatedly seized other packages of liquors, even after suit brought in other cases by me against them for such seizures.

I was greatly humiliated and mortified in this invasion and deprivation of my right and felt I was being trampled on and made an example of to deter others from exercising our known constitutional rights in this matter.

That defendant- acted after full notice, as above stated, from myself.

18 That the value of said package of bottled beer was ten dollars.

At the trial of said cause the defendants, R. M. Gardner, T. M. Holley, Sr., and E. C. Beach, being the plaintiffs in error herein, prayed the court to hold and find as law as follows, to wit: His honor, the presiding judge, is requested by the defendants to hold and find as matter of law that the act of the General Assembly of the State of South Carolina approved 2nd January, 1895, pp. 721, vol. 21st, Statutes at Large of South Carolina, generally known as the dispensary law, is not in conflict with article 9 of the Constitution of the United States, and is a lawful exercise of the police power of the State in prohibiting the importation by the plaintiff into the State of South Carolina of all intoxicating liquors, products of other States and foreign countries, for his own use and consumption, and in authorizing a seizure of such intoxicating liquors so imported into the State by plaintiff or any other person.

And thereupon the court refused to hold and find as a matter of law, as requested by the defendant-. Thereupon the defendant- duly excepted.

And thereupon, on the 10th day of August, 1895, the court, without a jury, rendered a judgment for the plaintiff in the sum of three hundred dollars; and thereafter, to wit, on the 10th day of August, 1895, judgment for plaintiff was duly entered in said cause in the circuit court of the United States for the district of South Carolina for the sum of three hundred dollars and interest and costs.

And inasmuch as the aforesaid matter did not appear by verdict

of the jury, the defendants, by their counsel, pray that their bill of exceptions may be allowed, and it is accordingly allowed, signed, and sealed by the presiding judge this 13th day of December, A. D. 1895.

CHARLES H. SIMONTON,
Circuit Judge.

Filed 13th December, 1895.

19 *Appeal Bond and Approval.*

Know all men by these presents that we, R. M. Gardner, M. T. Holley, and E. C. Beach, as principal-, and F. M. Mixson and John Gary Evans, as sureties, are held and firmly bound unto James Donald in full and just sum of two hundred and fifty dollars, to be paid to the said James Donald, his certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 13th day of December, in the year of our Lord one thousand eight hundred and ninety-five.

Whereas lately, at a session of the United States circuit court for the district of South Carolina, in a suit depending in the said court between James Donald and R. M. Gardner, M. T. Holley, Sr., and E. C. Beach, a judgment was rendered against the said R. M. Gardner, M. T. Holley, Sr., and E. C. Beach, and the said R. M. Gardner, M. T. Holley, Sr., and E. C. Beach having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said James Donald, citing and admonishing him to be and appear at a United States Supreme Court, to be holden at Washington, on the day in the said citation mentioned:

Now, the condition of the above obligation is such that if the said R. M. Gardner, M. T. Holley, Sr., and E. C. Beach shall prosecute said writ of error to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

F. M. MIXSON. [L. S.]
JOHN GARY EVANS. [L. S.]

Sealed and delivered in presence of—
C. P. TOWNSEND.

Approved by—
CHARLES H. SIMONTON,
Circuit Judge.

Filed 13th December, 1895.

20 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the circuit court of the United States for the district of South Carolina, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between James Donald, plaintiff, and R. M. Gardner, M. T. Holly, Sr., and E. C. Beach, defendants, a manifest error hath happened, to the great damage of the said R. M. Gardner, M. T. Holley, Sr., and E. C. Beach, defendants, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Supreme Court, together with this writ, so that you have the same at Washington, D. C., on the 11th day of January, 1896, next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of our Supreme Court, the 13th day of December, in the year of our Lord one thousand eight hundred and ninety-five.

J. E. HAGOOD,
Clerk of the Circuit Court of the United States for Dist. of S. C.

Allowed by—
CHARLES H. SIMONTON,
Circuit Judge.
13 Dec., 1895.

[Endorsed:] (Writ.) Filed 13 Dec., 1895. J. E. Hagood, C. C. C. U. S., dist. S. C.

21 UNITED STATES OF AMERICA, *ss:*

The President of the United States to James Donald, Greeting:

You are hereby cited and admonished to be and appear at a United States Supreme Court, to be holden at Washington, D. C., on the 11th of January, 1896, next, pursuant to writ of error from a judgment of the United States circuit court of the district of South Carolina in your favor passed in a cause in said court wherein you are plaintiff and R. M. Gardner, M. T. Holley, Sr., and E. C. Beach are defendants, and you are required to show cause, if any there be, why the judgment rendered against the said R. M. Gardner, M. T. Holly, Sr., & E. C. Beach in said cause mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Charles H. Simonton, judge of the circuit court of the United States, this 13th day of December, in the year of our Lord one thousand eight hundred and ninety-five.

CHARLES H. SIMONTON,
Circuit Judge.

Service acknowledged 13 Dec., 1895.

BRYAN & BRYAN,
Pl'ff's Att'ys.

[Endorsed:] Citation. Filed 13 Dec., 1895. J. E. Hagood, C. C. C. U. S., dist. S. C.

22 *Agreement of Counsel as to Record on Appeal.*

UNITED STATES OF AMERICA,
District of South Carolina.

Circuit Court, Fourth Circuit. At Law.

JAMES DONALD, Pl'ff,
vs.
J. M. SCOTT, D'f'd't.

JAMES DONALD, Pl'ff,
vs.
J. M. SCOTT, D'f'd't.

JAMES DONALD, Pl'ff,
vs.
R. M. GARDNER, M. T. HOLLEY, SR., E. C. BEACH, D'f'd'ts.

It is agreed between counsel that the following record in each of the above-stated cases shall constitute the transcript of record in each case (each case to be made up separately) for the Supreme Court:

1. Summons & complaint.
2. Demurrer. Order overruling demurrer.
3. Answer.
4. Stipulation to waive trial by jury.
5. Judgment of court.
6. Bill of exceptions.
7. Bond. Writ of error.

BRYAN & BRYAN,
Pl'ff's Att'y.
WM. A. BARBER,
Att'y Gen'l, for Defendants.

Filed 11 December, 1895.

23 *Clerk's Certificate.*

THE UNITED STATES OF AMERICA, }
District of South Carolina. }

In the Circuit Court, Fourth Circuit. At Law.

I, J. E. Hagood, clerk of the circuit court of the United States for the district of South Carolina, do hereby certify that the foregoing is a true and correct copy of all the records and proceedings as agreed upon by counsel to constitute the record on appeal in the case of James Donald, plaintiff, against R. M. Gardner, M. T. Holley, Sr., and E. C. Beach, defendants, rendered as aforesaid, together with all things relating to the same, as appears by the records now on file in my office.

Given under my hand and seal of said court, at clerk's office, in the city of Charleston, S. C., in the district aforesaid, this 18th day of December, A. D. 1895.

[Seal U. S. Circuit Court, District of So. Carolina.]

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

Endorsed on cover: Case No. 16,150. S. Carolina C. C. U. S. Term No., 413. R. M. Gardner, M. T. Holley, Sr., & E. C. Beach, plaintiffs in error, *vs.* James Donald. Filed January 17, 1896.

165-107

FILED.
OCT. 9, 1896

BRIEF ON BEHALF OF PLAINTIFFS IN ERROR.

Supreme Court of the United States,

OCTOBER TERM, 1896.

Nos. 411, 412 and 413.

R. M. GARDNER, M. T. HOLLEY, SR., AND E. C. BEACH,
PLAINTIFFS IN ERROR,

vs.

JAMES DONALD.

J. M. SCOTT, PLAINTIFF IN ERROR,

vs.

JAMES DONALD.

J. M. SCOTT, PLAINTIFF IN ERROR,

vs.

JAMES DONALD.

IN ERROR

TO THE

Circuit Court of the United States,

FOR THE DISTRICT OF SOUTH CAROLINA.

WILLIAM A. BARBER,
ATTORNEY-GENERAL,
For Plaintiffs in Error.

COLUMBIA, S. C.
CHARLES A. CALVO, JR., PRINTER.
1896.



United States of America,

IN THE SUPREME COURT.

OCTOBER TERM, 1896.

R. M. GARDNER, M. T. HOLLEY, SR., AND E. C. BEACH, PLAINTIFFS IN ERROR,

1 *vs.* No. 413

JAMES DONALD.

J. M. SCOTT, PLAINTIFF IN ERROR,

2 *vs.* No. 411

JAMES DONALD.

J. M. SCOTT, PLAINTIFF IN ERROR,

3 *vs.* No. 412

JAMES DONALD.

BRIEF OF WILLIAM A. BARBER, ATTORNEY-GENERAL OF SOUTH CAROLINA,

Representing the Plaintiffs in Error.

These actions were brought by James Donald in the Circuit Court of the United States for the District of South Carolina, the first against R. M. Gardner, M. T. Holley, Sr., and E. C. Beach, and the other two against J. M. Scott, for six thousand dollars damages in each case, for trespasses

committed by them in seizing wine, beer and whiskey belonging to him. The wine, beer and whiskey were purchased and imported by him into the State of South Carolina for his own use and consumption, and were seized from the railroad companies in Charleston, S. C., after they had reached their point of destination. R. M. Gardner, M. T. Holley, Sr., E. C. Beach and J. M. Scott at the time of the seizures were State constables, duly appointed and commissioned under the Act commonly known as the Dispensary Law of South Carolina. In their answer to the complaints, they justify for the seizures of the beer, wine and whiskey upon the ground that, as State constables, they had authority, and it was their duty under the Dispensary Law to make the seizures.

At the time of the trial of the cases in the Circuit Court, it was stipulated and agreed by and between the attorneys of record that the issues of fact in the cases be tried and determined by the Court without the intervention of a jury, and the cases were heard by the Court.

At the hearing R. M. Gardner, J. M. Holley, Sr., E. C. Beach and J. M. Scott prayed the Court to hold and find as law "that the Act of the General Assembly of South Carolina, approved 2d January, 1895, pp. 721, Vol. 21 Statutes at Large of South Carolina, generally known as the Dispensary Law, is not in conflict with Article 9 of the Constitution of the United States and is in lawful exercise of the police power of the State in prohibiting the importation by the plaintiff into the State of South Carolina of all intoxicating liquors, products of other States and foreign countries, for his own use and consumption, and in authorizing a seizure of such intoxicating liquors so imported into the State by plaintiff or any other person;" and thereupon the Court refused to so hold and find as a matter of law, and the said parties duly excepted.

The contention of the plaintiffs in error is, that they were authorized by the Act of the General Assembly of the State of South Carolina, approved 2d January, 1895, generally known as the Dispensary Law, as State constables, to seize the wine, beer and whiskey mentioned in the complaints belonging to James Donald, as the importation of them as the products of other States, within the State of South Carolina for his own use and consumption was prohibited by the said Act, and that said Act was enacted in the lawful exercise of the police power of the State and is not in conflict with the 9th Article of the Constitution of the United States, and that the Circuit Judge committed error in holding as he did.

FIRST PROPOSITION.

The plaintiffs in error, as State constables, were authorized by the Act generally known as the Dispensary Law to seize the wine, beer and whiskey of James Donald.

Section 43 of the Act is "The Governor shall have authority to appoint one or more State constables at a salary of two dollars per day when on duty, and two chief constables at three dollars each per day and expenses, to see that this Act is enforced, the same to be charged to the expense account of the State Commissioner, except as otherwise provided in this Act."

Section 32 provides "that all fermented, distilled or other liquors or liquids containing alcohol, transported into this State or remaining herein for use, sale, consumption, storage or other disposition, shall, upon introduction and arrival in this State, be subject to the operation and effect of this law to the same extent and in the same manner as though such liquors or liquids had been produced in the State."

Section 29 provides "that all constables, deputy constables, sheriffs, trial justices or municipal policemen shall have the right, power and authority, and it shall be their duty, when-

ever they are informed or suspect that any such suspicious package in possession of a common carrier contains alcoholic liquors or liquids, to detain the same for examination for the term of twenty-four hours without any warrant or process whatever. Any constable, deputy constable, sheriff or trial justice who shall neglect or refuse to perform the duties required by this Act shall be subject to suspension by the Governor. Any sheriff or trial justice seizing any alcoholic liquor or liquids as required by this Section shall be paid one-half the value of said liquors or liquids so soon as the same shall have been received at the State Dispensary, approved and disposed of according to law."

Section 33 provides "that no person, except as provided in this Act, shall bring into this State, or transport from place to place within this State, by wagon, cart, or other vehicle, or by any other means or mode of carriage, any liquor or liquids containing alcohol, under a penalty of one hundred dollars or imprisonment for thirty days for each offense, upon conviction thereof, as for a misdemeanor. Any servant, agent or employee of any persons, corporations or associations doing business in this State as common carrier, or any person whatever (except an officer seizing or examining the same), who shall remove any intoxicating liquors from any railroad car, vessel or other vehicle of transportation at any place other than the usual and established stations, wharves, depots or places of business of such common carriers within some incorporated city or town where there is a Dispensary, or who shall aid in or consent to such removal, or attempt to remove, shall, upon conviction, be sentenced to pay a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment for a term of not less than three months nor more than twelve months: *Provided*, That said penalty shall not apply to any liquor in transit when changed from car to car to facilitate transportation across the State: *Provided*, That

this Section does not apply to liquors purchased from a Dispensary and bearing the proper label or certificate. All liquors in this State, except Dispensary liquors and those passing through this State, consigned to points beyond this State, shall be deemed contraband and may be seized in transit without warrant. Any steamboat, sailing vessel, railroad, express company or other common carrier, transporting or bringing into this State for sale or use therein, except by the Dispensary, shall suffer a penalty of five hundred dollars and costs for each offense, to be recovered by the Solicitor of the circuit, or the Attorney-General, by an action brought therefor in any Court of competent jurisdiction. The State constable, sheriff, municipal police or any lawful constable may enter any railroad car, or express car, or depot, or steamboat, or other vessel, without warrant and make search for such contraband liquors, and may examine the way bills and freight books of said common carriers, and any one interfering with or resisting such officer shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment for a term of not less than three months nor more than twelve months."

Section 1 of the Act provides that the manufacture sale, barter or exchange, receipt, acceptance, delivery, storing and keeping in possession, within this State, of any spirituous, malt, vinous, fermented, brewed (whether lager or rice beer) or other liquors, or any compound or mixture thereof, by whatever name called or known, which contains alcohol and is used as a beverage by any person, firm or corporation; the transportation, removal, the taking from the depot or other place by consignee or other person, or the payment of freight or express or other charges by any person, firm, association or corporation, upon any spirituous, malt, vinous, fermented, brewed (whether lager, rice or other beer) or other liquor, or any compound or mixture thereof, by whatever name called or known, which contains alcohol and is

used as a beverage, except as hereinafter provided, is hereby prohibited under a penalty of not less than three (3) nor more than twelve (12) months at hard labor in the State Penitentiary, or pay a fine of not less than one hundred dollars nor more than five hundred dollars, or both fine and imprisonment, in the discretion of the Court, for each offense. All such liquors except when bought from a State officer authorized to sell the same, or in possession of one, are declared to be contraband and against the morals, good health and safety of the State, and may be seized wherever found, without warrant, and turned over to the State Commissioner."

Section 25 provides "that any of the liquors set forth in Section one (1) of this Act, which are contraband, may be seized and taken without warrant by any State constable, sheriff or policeman, while in transit or after arrival, whether in possession of a common carrier, depot agent, express agent, private person, firm, corporation or association, and reported to the State Commissioner at once, who shall dispose of the same as hereinafter provided: *Provided*, That liquors purchased outside the State, owned and conveyed as personal baggage, shall be exempt from seizure when the quantity does not exceed one gallon."

SECOND PROPOSITION.

The Dispensary Act of South Carolina is the lawful exercise of the police power of the State and is not in conflict with Article 9 of the Constitution of the United States in so far as it prohibits citizens of the State from importing within the State alcoholic liquors for their own use and consumption. For the authorities on this proposition the Court is respectfully referred to the Brief in the case of *J. M. Scott, M. T. Holley, Sr., E. C. Beach and R. M. Gardner, Appellants*, v. *James Donald*, No. 410 on the Docket, which are included under the fourth proposition in said argument.

WILLIAM A. BARBER,
Attorney-General,
Counsel for Plaintiffs in Error.

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BRIEF ON BEHALF OF DEFENDANT IN ERROR.

Supreme Court of the United States.

OCTOBER TERM, 1896.

Nos. 411, 412 and 413.

R. M. GARDNER, M. T. HOLLEY, SR., and E. C. BEACH, PLAINTIFFS IN ERROR.

vs.

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JAMES DONALD, DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

J. P. K. BRYAN,

Counsel for Defendant in Error.

Walker, Evans & Cogswell Co., Printers, Charleston, S. C.

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J. P. K. BRYAN,

Counsel for Defendant in Error.

Walker, Evans & Cogswell Co., Printers, Charleston, S. C.

These three cases at law all involve alike one question, made in the bill of exception in each case, to wit: the constitutionality of the Act of the General Assembly of the State of South Carolina, approved 2d January, 1895, p. 721, vol. 21, Statutes at Large of South Carolina, generally known as the State Liquor Dispensary Law, in prohibiting the importation by the plaintiff into the State of South Carolina of all intoxicating liquors, products of other States and foreign countries, for his own use and consumption, and authorizing a seizure of the same.

The facts peculiar to each case are as follows:

In No. 411, *Scott, Plaintiff in Error, vs. Donald,* the evidence appearing in bill of exceptions is as follows:

"On the 6th day of March, 1895, I shipped from Savannah, Ga. one case of domestic California claret wine, containing one dozen quart bottles, belonging to myself and addressed "James Donald, Charleston, S. C." This package came from Savannah, Georgia, to the City of Charleston, by way of Charleston and Savannah Railway Company, and while in the depot of the Charleston and Savannah Railway, at Charleston, S. C., on 8th March, 1895, was seized and carried away by the defendant, claiming to act as State constables, and under the authority of the Dispensary Law of the State of South Carolina, approved 2d January, 1895,

"This brand of wine was produced and made in the State of California, and was imported into the State of South Carolina for the use of myself, and was not intended for sale or barter, trade or exchange by me within the State of South Carolina." (Fol. 15, 16, No. 411.)

In No. 412, Scott, plaintiff in error vs. Donald the evidence as appears in bill of exception is:

"On the 5th day of March, 1895, I shipped from Baltimore one-half case of "Pickwick Club" whiskey, containing six quart bottles, belonging to myself and addressed to "James Donald, Charleston, S. C." This package came from Baltimore to the City of Charleston by way of the Baltimore Steam Packet Company and the Atlantic Coast line, and while in the North Eastern R. R. depot, in Charleston, S. C., on 8th March, 1895, was seized and carried away by the defendant, claiming to act as State constable and under authority of the "dispensary law" of the State of South Caro-Carolina, approved 2nd January, 1895."

This brand of liquor was produced in the State of Maryland and was imported into the State of South Carolina for the use of myself, and was not intended for sale, barter, trade or exchange by me within the State of South Carolina. (Folio 15, 16 No. 412.)

In No. 413, Gardner *et al.*, Plaintiff in error, vs. Donald, the testimony in bill of exception is :

" On day of January, 1893, I had shipped from New York City to my address, " James Donald, Charleston, S. C.," one barrel of bottled beer (10 dozen bottles) made in New York State, known as Rochester beer." This package came from New York by way of the Old Dominion Steamship line and Atlantic Coast line to the City of Charleston, S. C., and while in the Northeastern Railroad depot at Charleston, S. C., was, on 20th January, 1895, seized by the defendants claiming to act as State Constables, under the authority of of the " dispensary law of South Carolina," to wit : Act approved January 2, 1895, and carried away.

" The said package of beer was produced in State of New York and was imported into the State of South Carolina for the use of myself (James Donald,) and was not intended for sale, barter, trade, or exchange by plaintiff within the State of South Carolina." (Folio 16, 17, No. 413.)

The facts common to all these three cases, as appears by evidence in each Bill of Exceptions is—Donald testifies :

" I was legally advised that the Dispensary Law of the State of South Carolina authorizing seizure of intoxicating liquors imported for my own use was void, and all such seizure was illegal as being against the Constitution of the United States, and that I had the legal right to buy in other States and foreign countries wine, beer, ales and ardent spirits, the product of other States and foreign countries, and to import them into South Carolina for my own use, and to own, possess and use and consume the same so imported in South Carolina."

" That before the importation of said package, and before the seizure, I sent a written notice by mail to the defendants, informing *them* of my intention, in exercise of my legal right, guaranteed by the Constitution of the United States, to import ales, wines and other liquors from other States and foreign countries for my own use and consumption, as I may need the same, and that any seizure of said goods under any pretence of authority would be a great and grievous trespass and in disregard of my known constitutional rights, for which they and all concerned would be held responsible by all legal remedies for my protection."

"That, notwithstanding this written notice, this defendant took and carried away the said package as above stated, and *have* repeatedly carried away other packages of liquors, even after suit brought in other cases by me against *them* for such seizures."

See Bill of Exceptions in each case, Nos. 411, 412,413.

Thereupon the plaintiff, James Donald, on 11th and 19th March and 16th February, 1895, respectively brought these three several actions at law in the Circuit Court of the United States for the District of South Carolina against the defendants for exemplary and punitive damages as set forth in the complaint in each case. The defendants answered, justifying the trespass and seizures under the authority of the Act of South Carolina, known as the "Dispensary Law," as set forth in the answer, and upon a hearing by the Court, jury trial being waived, the Court gave judgment in each case, on 10th August, 1895. for the sum of three hundred dollars.

Upon the hearing in each case, the defendants made the following request of the Court :

"*His Honor, the Presiding Judge, is requested by the defendants to hold and find as matter of law that the Act of the General Assembly of the State of South Carolina approved 2nd January, 1895, p. 721, Vol. 21st, Statutes at Large of South Carolina, generally known as the Dispensary Law, is not in conflict with Article 9 of the Constitution of the United States, and is a lawful exercise of the police power of the State in prohibiting the importation by the plaintiff into the State of South Carolina of all intoxicating liquors, products of other States and foreign countries, for his own use and consumption, and in authorizing a seizure of such intoxicating liquors so imported into the State by plaintiff or any other person.*" See Bill of Exceptions.

And thereupon the Court refused to hold and find as a matter of law, as requested by the defendant. Thereupon the defendant duly excepted.

The alleged error in this exception relates to the constitutionality of the said "Dispensary Law,"

We have discussed this question in the case of *Scott et al., vs. James Donald*, No. 410, at this term, and we submit in these cases also the argument filed in that case on behalf of the appellee. In that Brief we quote by folio the sections of the Dispensary Act of the State of South Carolina involved in this discussion as the same is printed as Exhibit to the Bill in Equity in the Record in that case (No. 410.)

J. P. K. BRYAN.
Counsel for James Donald,
Defendant in Error, in Nos. 411, 412 and 413.